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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/220,986	12/23/1998	SAM SCHWARTZ	17649-20	5361

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EXAMINER

KISHORE, GOLLAMUDI S

ART UNIT	PAPER NUMBER
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1615

26

DATE MAILED: 03/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/220,986

Applicant(s)

SCHWARTZ, SAM

Examiner

Gollamudi S Kishore, PhD

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) ____ is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 6) ☐ Other: _____

DETAILED ACTION

The request for the extension of time and amendment dated 1-2-04 is acknowledged.

Claims included in the prosecution are 19-31.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 19-31 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant presents a new set of claims claiming 'at least about 90% by weight Dead sea mineral salts'. A careful review of the specification indicates that there is no support for this expression and therefore, deemed to be new matter.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 20, 22-24, 29 and 31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear as to what is being conveyed by 'partial esters of lauric, palmitic, stearic and oleic acids' in claim 22. These fatty acids have a single carboxyl group and therefore, one can get only one type of esters and those esters are not partial esters.

What is being conveyed by 'antioxidant component is further comprised of ---- citric acid' in claim 23? Is it the applicant's intent to say that the antioxidant is selected from the group consisting of? If so, citric acid is not antioxidant.

It is unclear what 'complex of propylene glycol' in claim 24 is intended to convey. What is it complexed with?

Claim 29 recites 'composition of claim 19 further comprising glycerin'. Glycerin is a specific compound and such an addition to the composition in claim 19 is understandable if claim 19 recites specific components. However, claim 19 recites only two components, salt and 'base component' and base is not a specific compound. Reciting 'glycerin' as an additive in claim 29 is not meaningful if base component in claim 19 is not specified. Similar is the case with claim 31. In addition, the examiner points out that glycerin and several others recited in the dependent claims are hydrophilic components and therefore, the distinction between 'glycerin' as further additive in claim 29 and 'hydrophilic component' in claim 20 is unclear.

In view of applicant's amendment to the claims, the 102 rejection over Stovraff is withdrawn.

Claim Rejections - 35 U.S.C. § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 19-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stovraff (5,866,145) by itself or in combination with GB 1479 199.

Stovraff as pointed out before discloses body polisher compositions (lotions) containing Dead Sea salts, an emollient, a skin conditioner and fragrance (note the abstract, and columns 1-2). According to Stavroff, the amount of the Dead Sea salts can be varied from 50 to about 80 percent. Although Stavroff does not teach about 90 percent of the Dead Sea salts, in the absence of showing unexpected results, it is deemed obvious to one of ordinary skill in the art to vary the amounts taught by Stavroff to obtain the best possible exfoliating effect. Although Stavroff does not teach the additions of an antimicrobial agent and other claimed components, these ancillary components are common additives in cosmetic products and therefore, addition of these is deemed to be within the skill of the art. Furthermore, the criticality of these

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additives is not apparent to the examiner since, instant claims are drawn to exfoliating compositions and a careful review of the specification on page 14 indicates that the exfoliating composition does not contain thickeners and amino acids recited in instant claims.

GB discloses scrubbing compositions containing salt crystals. The compositions further contain skin conditioners such as propylene glycol, moisturizers, surfactants, emollients, suspending agents, preservatives, emulsion stabilizers, fatty acids and esters. GB teaches the salt crystal amounts between 30 and 60 %. (note the entire patent, page 2, col. 1, and line 23 through col. 2, line 126, Example 3 and claims in particular). GB however, does not teach that the salt crystals are those obtained from Dead Sea. GB also lacks the teachings of using instant amounts of salt. However, it should be pointed out that GB teaches on page 2, col. 2, lines 121-126 that one can achieve the debridement of the comedones can be achieved by rubbing with salt moistened with water. This implies almost all salt with little water.

One of ordinary skill in the art would be motivated to change the amounts of the salt amount in Stavroff since GB is suggestive of such variations. The various additives in the compositions of Stavroff would have been obvious to one of ordinary skill in the art since GB teaches that the additions of these components is common practice in the art.

7. Claims 19-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 1479 199 in view of JP 08113530, Biener (4943432) by themselves or in combination.

GB discloses scrubbing compositions containing salt crystals. The compositions further contain skin conditioners such as propylene glycol, moisturizers, surfactants, emollients, emulsion stabilizers, fatty acids and esters. GB teaches the salt crystal amounts between 30 and 60 %. (note the entire patent, page 2, col. 1, line 23 through col. 2, line 126, Example 3 and claims in particular). GB however, does not teach that the salt crystals are those obtained from Dead Sea. GB also lacks the teachings of using instant amounts of salt. However, it should be pointed out that GB teaches on page 2, col. 2, lines 121-126 that one can achieve the debridement of the comedones can be achieved by rubbing with salt moistened with water. This implies almost all salt with little water.

JP teaches that the salt obtained from Dead Sea salt has excellent skin beautifying actions (note the abstract).

Biener similarly teaches that Dead Sea salt and a salt mixtures which is an excellent therapeutic agent for skin diseases (note col. 1, line 27 et seq.).

The use of the salt obtained from Dead Sea in the salt compositions taught by GB would have been obvious to one of ordinary skill in the art because of the excellent skin beautifying effects and the therapeutic effect taught by JP and Biener. The use of higher amounts of salt would have been obvious to one of ordinary skill in the art since it is not only a manipulatable parameter, but also because GB is suggestive of the use of higher amounts.

Applicant's arguments have been fully considered, but are not found to be persuasive. Applicant argues that the references do not teach the claimed amounts of

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the salt. This argument is not found to be persuasive since as pointed out above, the amount of salt is a manipulatable parameter as evident from the references. In addition, the examiner points out that the primary reference of GB clearly teaches the salt composition for abrasion purposes, just as in instant invention except that the salt is not from Dead Sea and therefore, it is within the skill of the art to manipulate the amounts to obtain the best possible scrubbing effect. The rejection is maintained.

8. Claims 19-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 1479 199 in view of JP 08113530, Biener (4943432) by themselves or in combination as set forth above, further in view of Stavroff (5,866,145).

The teachings of GB, JP and Biener have been discussed above.

Stavroff as pointed out before discloses body polisher compositions containing Dead Sea salts, an emollient, a skin conditioner and fragrance (note the abstract, and columns 1-2). According to Stavroff, the amount of the Dead Sea salts can be varied from 50 to about 80 percent. An artisan would be further motivated to use Dead Sea salts and vary its amounts in the compositions taught by GB.

9. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stavroff by itself or in combination with GB; or GB 1479 199 in view of JP 08113530, Biener (4943432) by themselves or in combination; or GB 1479 199 in view of JP 08113530, Biener (4943432) by themselves or in combination, further in view of Stavroff as set forth above, further in view of Chodosh (5,827,870).

Stavroff, GB, JP and Biener do not teach the use of pumice or silica.

The reference of Chodosh, which discloses an antimicrobial composition, teaches that the addition of pumice in body scrubs is a routine practice in the art (note col. 5, lines 62-65). The addition of other scrubbing agents expecting the additional exfoliating effect would have been therefore, obvious to one of ordinary skill in the art, with the expectation of obtaining the best possible results.

Applicant's arguments with regard to Stavroff, GB, JP and Biener and claimed amounts of salts have been addressed above. Applicant argues that Chodosh fails to teach Dead Sea salts. Applicant further argues that in further combining Chadosh, does not result in the claimed invention because the addition of pumice still does not give a composition that is about 90 % salt. The examiner points out that the reference is combined for the teachings of pumice in the body scrubs and not the teachings of the amounts of salt. The rejection is maintained.

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gollamudi S Kishore, PhD whose telephone number is (571) 272-0598. The examiner can normally be reached on 6:30 AM- 4 PM, alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 1234.



Gollamudi S Kishore, PhD
Primary Examiner
Art Unit 1615

GSK